IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6281 OF 2006

Shailaja Hanmant Visapurkar
& Ors. .. Petitioners.

vs.

Kupwad Urban Co-operative
Bank Ltd., & Ors. .. Respondents.

Mr. Vikas M. Mali for petitioners.

CORAM : A.P. DESHPANDE, J.

DATE : 30th November, 2006.

P.C.

. By the present petition, the petitioners question the legality and propriety of an order passed by the Maharashtra State Co-operative Appellate Court Mumbai, Bench at Pune dated 25.7.2006 whereunder appeal filed by the respondent bank is allowed and injunction granted by the co-operative court restraining the bank from proceeding under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is vacated.

2. The respondent bank instituted a dispute in

the co-operative court for recovery of a sum of Rs. 1,23,000/- and odd against the present petitioner and others. It is stated in the dispute that the present petitioner has mortgaged immovable property in favour of the bank on 3.11.1998. The dispute is pending on the file of the co-operative court. During pendency of the dispute the respondent bank served a notice under section 13 of the Securitization Act on the present petitioner with view to proceed further in the matter under section 13 (4). The present petitioner thus filed an application seeking an injunction against the respondent bank from proceeding under the Securitization Act. It is the case of the petitioner that in the first place he is not liable for repayment of the loan and in the second place it is contended that he has not mortgaged the property for securing the loan in the instant account, which is subject matter of the dispute, whereas he had mortgaged the property for securing loan in some other loan account. The trial court granted the injunction as prayed for whereas the appellate court has set aside the order passed by the trial court granting injunction and rejected the application. It is this order which is challenged in the present petition.

3. The provisions of the Securitisation Act have an overriding effect by virtue of section 35 whereas

section 34 bars the jurisdiction of the civil court. The learned counsel for the petitioner submits that his case falls within the exception carved out in Mardia Chemical's case as the petitioner is disputing the execution of the mortgage itself. If that be so, it shall be open for the petitioner to file appropriate proceedings before the appropriate forum calling in question the notice issued by the bank. However, it is made clear that no injunction could have been granted by the trial court in the dispute filed by the bank for recovery of the loan and the appellate court has rightly set aside the order passed by the trial court. In the result writ petition is summarily dismissed.

(A.P. Deshpande, J.)